

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

Civil Action No. 06-00520-GMS, 06-00521-GMS

In re: NELLSON NUTRACEUTICAL, INC., et al.

Debtors.

Bankruptcy Case No. 06-10072 (CSS)

**UNITED STATES TRUSTEE AND
OFFICIAL COMMITTEE OF UNSECURED CREDITORS**

Appellants,

v.

NELLSON NUTRACEUTICAL, INC., et al.

Appellees.

APPEAL FROM THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE
(Christopher S. Sontchi, Judge)

**DECLARATION OF JAMES M. FRAGNOLI IN SUPPORT OF
APPELLEES' MOTION TO DISMISS APPEAL ON MOOTNESS GROUNDS**

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Counsel for the Appellees

DATED: June 26, 2007

STATE OF CALIFORNIA)
 ss)
COUNTY OF LOS ANGELES)

I, James M. Fragnoli, declare as follows:

1. I am the Corporate Controller of Nellson Nutraceutical, Inc. ("Nellson"), Nellson Holdings, Inc. ("Nellson Holdings"), Nellson Intermediate Holdings, Inc. ("Nellson Intermediate"), Nellson Northern Operating, Inc. ("Nellson Northern"), Nellson Nutraceutical Eastern Division, Inc. ("Nellson Eastern"), Nellson Nutraceutical Powder Division, Inc. ("Nellson Powder") and Vitex Foods, Inc. ("Vitex") (collectively, the "Debtors" or the "Appellees").¹

2. My current duties for the Debtors include general supervision of, and responsibility for, many aspects of the Debtors' financial affairs; assisting with the financial activities of the Debtors; and other related matters.

3. In my capacities with the Debtors, I have general knowledge of the Debtors' books and records, and am familiar with the Debtors' financial and operational affairs.

4. I submit this Declaration in support of the *Appellees' Motion to Dismiss Appeal on Mootness Grounds*. All statements in this Declaration are based upon my personal knowledge, my review of the Debtors' books and records, or relevant documents and other information prepared or collected by the Debtors' employees. If I were called to testify as a witness in this matter, I could and would competently testify to each of the facts set forth herein

¹ Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the *Appellees' Motion to Dismiss the Appeal on Mootness Grounds*.

based upon my personal knowledge, review of documents, or opinion. I am authorized to submit this Declaration on behalf of the Debtors.

5. On July 31, 2006, the Debtors made their first payment to employees under the management incentive program (the "MIP") for achieving the operational benchmarks set forth for the first half of 2006. The aggregate sum of \$550,000 was paid at that time.

6. The Debtors did not achieve their performance targets for the second half of 2006. Accordingly, no additional payments under the MIP were made.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 26 th day of June, 2007.

NELLSON NUTRACEUTICAL, NELLSON HOLDINGS, INC., NELLSON INTERMEDIATE HOLDINGS, INC., NELLSON NORTHERN OPERATING, INC., NELLSON NUTRACEUTICAL EASTERN DIVISION, INC., NELLSON NUTRACEUTICAL POWDER DIVISION, INC. AND VITEX FOODS, INC.

By:



James M. Fragnoli
Corporate Controller

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

In re:

NELLSON NUTRACEUTICAL, INC., et al.,

Debtors.

UNITED STATES TRUSTEE AND THE
OFFICIAL COMMITTEE OF UNSECURED
CREDITORS,

Appellants,

1

NELSON NUTRACEUTICAL, INC., et al.,

Appellees.

Civil Action No. 06-520 (GMS)

Civil Action No. 06-521 (GMS)

Bankruptcy Case No. 06-10072 (CSS)

Appeal No. 06-45

AFFIDAVIT OF SERVICE

STATE OF DELAWARE)
)SS:
COUNTY OF NEW CASTLE)

Karina Yee, being duly sworn according to law, deposes and says that she is employed by the law firm of Pachulski Stang Ziehl Young Jones & Weintraub LLP, counsel for the Appellees, in the above-captioned action, and that on the 26th day of June, 2007, she caused a copy of the following document(s) to be served upon the attached service list(s) in the manner indicated:

Declaration of James M. Fragnoli in Support of Appellees' Motion to Dismiss Appeal on Mootness Grounds

Karina Yee
Karina Yee

Sworn to and subscribed before
me this 26th day of June, 2007

VANESSA A. PRESTON

1. **State of Incorporation:** City Public - State of Delaware

My Comm. Expires March 21, 2008

Notary Public

My Commission Expires: 03-21-08

Nellson Nutraceutical, Inc. Appeal Service**List**

Case No. 06-10072 (CSS)
 Document No. 120478
 02 – Interoffice Delivery
 06 – Hand Delivery
 05 – First Class Mail

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